DISCHARGE IN BANKRUPTCY—A SUGGESTED CHANGE.

The purpose of this article is to suggest to the bar that the bankruptcy acts be so amended that a discharge be granted, only after the payment by the bankrupt of all or some certain percentage of his debts, within a definite time after the filing of his petition. The amount of payment, together with the time for its payment, to be prescribed by the bankrupt court after hearing evidence of the bankrupt's circumstances, and earning capacity.

It is unquestionably true that our present act, under which the bankrupt is entitled to a discharge as a matter of right, is susceptible of great abuse and is greatly abused. For instance there are weekly if not daily instances of men, with earning capacities ranging above $100.00 per month, who file petitions in bankruptcy and schedule debts totaling less than five hundred dollars—many of these men claim exemptions totaling more than their debts. Some of these men would be willing to pay their debts in full, if the bankruptcy laws merely acted as a stay, preventing garnishments and executions while they were paying. Practically all of them could pay, if they were required to do so, and many of them in a few months. These are of course extreme cases, but with rare exceptions, petitions are filed by persons, whose total indebtedness do not exceed their earning capacity for one or two years.

In these cases it surely could be no hardship for the court to enter an order, after having heard the evidence concerning the situation of the bankrupt, and his ability to earn, requiring him to pay 25, 50, or even 100 per cent of the principle of his debts. Certainly not so much hardship as it is to the creditor, who is, in many cases, left destitute, by the failure of the bankrupt to pay.

Authorities on the law tell us that its purpose is to permit persons to escape staggering loads of debt, incurred through speculation or business misadventure, by which an otherwise useful citizen might be oppressed for life. But even in those cases it is more frequently true than not, that if the debtor is relieved from the load of ever accumulating interest, and as-

sured that he may proceed with some occupation without the danger of importunate creditors closing him out, he can pay a surprisingly large percentage of the principle of his debts. Men who incur large indebtedness are usually men of large earning capacity, who need but an opportunity to earn and repay to their creditors some portion if not all of their indebtedness.

This takes no account of the petitions filed by persons who have concealed assets. It would be much harder to keep such assets from the knowledge of their creditors during a period of years, than for the short time required to obtain a discharge.

The history of bankruptcy acts shows that this thought was originally embodied in them. Our modern humanitarian leanings however seem to have led us into a law which more frequently defrauds the creditor, than the old law oppressed the debtor.

The English bankruptcy act of 32 and 33 Victoria Ch. 71 provided that a discharge should be granted in the event the assets of the bankrupt were sufficient to pay ten shillings on the pound; or in the event they did not pay such an amount then, the bankrupt was given three years in which to pay an amount equal thereto; or lacking this it was necessary to obtain the assent of a certain number of the creditors. Similar provisions are found in the acts of many other nationalities. In the Federal act of March 2, 1867, a second discharge would not be granted unless the assets totaled 70% of the debts or the debts scheduled by the last petition had been paid or released or unless three fourths in amount, of the creditors assent.

These hard and fact provisions are of course subject to the objection that in many cases the required payment of 50% or even 25% would amount to the refusal of a discharge so that the debtor would practically be deprived of the benefit of the law. And to get the consent of a fixed number of the creditors would probably lead to the payment of those, to the exclusion of others. That the plan suggested would do away with these abuses seems reasonably certain.

That abuses exist is evidenced by the frequent unwillingness of merchants to give credits to men whose ability to pay, based on their earning capacity, is beyond question. The

knowledge on the part of the wholesaler, the retailer, and the banker that a man, of comparatively large earning capacity, can lightly step from under his debts and be absolutely discharged from them, is slowly undermining the credit of the working man and the small business man, in our large working centers.

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Sept. 17, 1917.